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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

TRINITY BROADCASTING OF FLORIDA, INC.)
and)
GLENDALE BROADCASTING COMPANY)

Miami, Florida)
-----)

MM DOCKET NO. 93-75

DATE OF HEARING: January 21, 1994

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

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The above-entitled matter come on for hearing pursuant to
 Notice before Judge Joseph Chachkin, Administrative Law Judge,
 at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3,
 on Friday, January 21, 1994, at 10:15 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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 NATHANIEL EMMONS, Esquire
 CHRISTOPHER HOLT, Esquire
 Mullin, Rhyne, Emmons and Topel
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 Washington, D.C. 20036-5383

On behalf of Glendale Broadcasting Company:

JOHN SCHAUBLE, Esquire
 LEWIS COHEN, Esquire
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 Washington, D.C. 20036

On behalf of the S.A.L.A.D.:

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1 APPEARANCES (Continued):

2 On behalf of the Mass Media Bureau:

3 JAMES SHOOK, Esquire
4 GARY SCHONMAN, Esquire
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Washington, D.C. 20554

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I N D E X

| <u>Witness</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|----------------|---------------|--------------|-----------------|----------------|
| David Gardner | | | | |
| By Mr. Emmons | 4667 | | | |

E X H I B I T S

| <u>TBF</u> | <u>Identified</u> | <u>Received</u> | <u>Rejected</u> |
|-----------------|-------------------|-----------------|-----------------|
| Exhibit No. 267 | 4681 | 4681 | |
| Exhibit No. 268 | 4760 | | |

1 P R O C E E D I N G S

2 JUDGE CHACHKIN: Go ahead, Mr. Emmons.

3 MR. SCHAUBLE: Your Honor, just one preliminary
4 matter.

5 JUDGE CHACHKIN: Yes.

6 MR. SCHAUBLE: Because of the day off yesterday, Mr.
7 Gardner has been able to rearrange his schedule and,
8 therefore, he can go on --

9 JUDGE CHACHKIN: He can on today?

10 MR. SCHAUBLE: -- until 4:00 p.m. this afternoon.

11 JUDGE CHACHKIN: Fine. Go on, Mr. Emmons.

12 Whereupon,

13 DAVID GARDNER

14 was recalled as a witness and, after having previously been
15 duly sworn, was examined and testified further as follows:

16 DIRECT EXAMINATION

17 BY MR. EMMONS:

18 Q Mr. Gardner, would you turn please to TBF Exhibit
19 237 in one of those blue volumes?

20 A Yes.

21 Q Do you recognize -- well, let me -- just to orient
22 you, this exhibit consists of four portions of the draft, FCC
23 Form 345, Application to Transfer Control of Construction
24 Permit. And my question to you is do you recognize these
25 forms as having been sent to you by Trinity?

1 A I recall in my deposition we discussed these forms
2 and at that time I did not recall receiving them. However,
3 during my deposition and subsequent to that I've refreshed my
4 memory on them and I now believe that I did receive them from
5 Trinity.

6 Q And did you receive them with the typewritten
7 information that appears on there -- on the forms at the time
8 you received them?

9 A I don't recall if the typewritten information was on
10 there or not.

11 Q These, these documents were produced by Glendale in
12 this proceeding from Raystay's files, and so would it be fair
13 to assume then that if the typewritten information wasn't
14 already on these forms when you received the forms from
15 Trinity, then it was put on there by Raystay?

16 A Yes.

17 Q Now, looking, for example, at page 1 of the exhibit,
18 which is the first page of a draft application for assignment
19 of the permit for Channel 23 in Lancaster, do you see some
20 handwritten notations on the lower half of the page?

21 A Yes.

22 Q Is that your handwriting?

23 A It appears to be my handwriting.

24 Q And if you look through the rest of the pages of the
25 exhibit and verify, if you can, that the handwritten notations

1 on all the pages in the exhibit is your handwriting.

2 A It appears to be my handwriting.

3 Q So is it fair to say then that after you received
4 these forms from Trinity you either filled them out or marked
5 them up, as the case may be, with the information that appears
6 at least in the handwritten portion of it?

7 A Yes.

8 Q Now, turn to page 2 of the document, if you would,
9 which is the signature page relating to the Lancaster Channel
10 23 application, and you see that you have put in the date of
11 December 1991 in handwriting.

12 A Yes.

13 Q And is it fair to say then that you, you anticipated
14 that these applications would be signed sometime in December
15 1991?

16 A My recollection is that I felt that if they were
17 signed it would take place in December 1991.

18 Q Now, focusing still on page 2 of the exhibit, the
19 last handwritten entry is the word "President," and you've
20 testified already that George Gardner was the President of
21 Raystay Company. I take it then that you anticipated that
22 George Gardner would be signing these applications?

23 A If they were to be signed, George Gardner would sign
24 then as President.

25 Q Well, you, you felt that the parties were reasonably

1 close to making a deal, did you not, at the time you were
2 preparing these applications?

3 A I don't know -- I did not know at the time to what
4 extent George Gardner was receptive to these applications or
5 not. I'm not even sure that he was aware of anything other
6 than that discussions were taking place.

7 Q Well, why did you fill out the information that you
8 filled out on these applications then?

9 A In August of 1991 Lee Sandifer asked me to work with
10 Trinity and to see what I could develop, and what I was doing
11 was developing a deal to bring to Lee Sandifer and George
12 Gardner for their discussion -- for their decision at that
13 time.

14 Q All right. And did you bring the deal for their
15 discussion and decision?

16 A Lee Sandifer and I, I believe created a letter to
17 Trinity which we've already -- we discussed on Wednesday, but
18 I don't know to what extent George Gardner was aware of the
19 deal.

20 Q Well, you, you got a response to that letter, did
21 you not? You had a telephone call on October 30, 1991 that we
22 testified about the other day. Do you remember that?

23 A Yes.

24 Q And, and you made a handwritten note of Trinity's
25 offer on the price that Trinity would pay for the -- for TV40

1 and for the five permits? Do you remember that?

2 A Yes.

3 Q And you communicated that Trinity offer to Lee
4 Sandifer at least, did you not?

5 A I believe I did, yes.

6 Q And did you also communicate it to George Gardner?

7 A I did not.

8 Q Do you know whether Lee Sandifer did?

9 A I don't know whether Lee Sandifer did or not.

10 Q Did you have any further discussions with Mr.
11 Sandifer about the Trinity offer after you communicated that
12 offer to him?

13 A I would expect that we exchanged information about
14 whether or not discussions were progressing or not, but that's
15 the only thing I can think of that we would have discussed.

16 Q Well, what do you remember about such discussions?

17 A I don't remember anything about the discussions.

18 Q Turn please to TBF Exhibit 238. Do you have that
19 before you?

20 A Yes.

21 Q Do you recognize this document?

22 A Yes.

23 Q Tell us what it is?

24 A This is a note I received, I believe, from Lee
25 Sandifer that indicated to me I was to discontinue work on the

1 applications to transfer the construction permits to Trinity.

2 Q Now, when did you receive that note?

3 A I believe I received it the day it was written.

4 Q And that was December 3, 1991?

5 A Yes.

6 Q Who's the author of the note?

7 A George Gardner.

8 Q Do you recognize his handwriting?

9 A I recognize his signature.

10 Q And by signature you're referring to the handwritten

11 letter at the bottom right-hand corner of the page which

12 appears to be a G?

13 A Yes.

14 Q Was that a typical way in which George Gardner

15 signed his signature?

16 A Yes.

17 Q Now, see the reference in the note to -- in the

18 first line of the note to Lewis Cohen?

19 A Yes.

20 Q Who is Lewis Cohen?

21 A Raystay's FCC attorney.

22 Q All right. Now, what was your reaction when you

23 received this note?

24 A I put everything into -- I put all of the paperwork

25 on the Trinity work into a file and went on to my next job.

1 Q Well, did you have any reaction to the fact that
2 you'd now been instructed to discontinue negotiating with
3 Trinity?

4 A Yes.

5 Q What was it?

6 A I was happy another job was off my desk because I'm
7 really busy in December.

8 Q Did you, did you have any discussion with Mr.
9 Sandifer about the fact that George Gardner had ordered
10 negotiations with Trinity to be discontinued?

11 A I believe at some point in time I either asked why
12 or was told why.

13 Q And what were you told?

14 A That George Gardner had filed some sort of competing
15 application for a television station that Trinity was
16 presently the license for and that the LPTV discussions were
17 to be discontinued.

18 Q And who told you that?

19 A I don't recall.

20 Q Well, would it be fair to say that it was either Lee
21 Sandifer or George Gardner?

22 A One of those or possibly somebody at Cohen &
23 Berfield's office.

24 Q Now, how did you actually receive this note? I
25 mean, did it come to you in the mail? Did somebody come in

1 and hand it to you or what happened?

2 A I believe Lee Sandifer gave it to me.

3 Q Came into your office and gave it to you?

4 A Or I was in his office and he gave it to me, one or
5 the other.

6 Q Now, at that time, at the time when he gave you the
7 note, I take it you read the note at that time when he gave it
8 to you?

9 A I believe so, yes.

10 Q All right. Now, at that time did you and Mr.
11 Sandifer have any discussion at all about the substance of
12 this note?

13 A That might have been the time when he told me what
14 the background on the reason for it was.

15 Q Well, you would have been curious, I assume, to know
16 why this had been done?

17 A Yes.

18 Q Did you, in discussing this with Mr. Sandifer,
19 express frustration about the fact that these negotiations
20 that you had worked on for such a long time were now
21 terminated?

22 MR. SCHAUBLE: Your Honor, I'm going to object on
23 the basis of relevance.

24 JUDGE CHACHKIN: How do you express frustration? I
25 don't understand that.

1 MR. EMMONS: Well, let me, let me rephrase the
2 question.

3 BY MR. EMMONS:

4 Q Were you frustrated when you learned that Mr. --
5 that George Gardner had ordered the negotiations terminated?

6 MR. SCHAUBLE: Objection, Your Honor, relevance.

7 JUDGE CHACHKIN: How is it relevant whether he was
8 frustrated or not?

9 MR. EMMONS: It's relevant to the, the witness'
10 state of mind, Your Honor, in terms --

11 JUDGE CHACHKIN: What does his state of mind have to
12 do with the actions of George Gardner? That's what I want to
13 know. He's the applicant.

14 BY MR. EMMONS:

15 Q Mr. Gardner, did you communicate to Trinity after
16 you received this note that negotiations were being terminated
17 by, by Raystay over the low power permits?

18 A Yes.

19 Q And when did that communication occur?

20 A I don't recall.

21 Q What were the circumstances of that communication?

22 A Somebody from Trinity called me to ask where the
23 paperwork stood and I told them at that time that negotiations
24 had been discontinued on the instructions of George Gardner.

25 Q And did you explain -- give any further explanation

1 than that?

2 A I don't recall.

3 Q And you say you don't know when that conversation
4 took place?

5 A I believe it was in December or early January of
6 1992.

7 Q December of '91 or January of '92?

8 A December of '91 or January of '92.

9 Q But you did not take the initiative and -- upon
10 receiving this instruction on December 3 of '91, you did not
11 take the initiative to call Trinity? You waited until Trinity
12 called to find out what was going on?

13 A Correct.

14 Q Was it your impression that, that at the time of
15 that call that Trinity was still interested in moving forward
16 with the negotiation process?

17 MR. SCHAUBLE: Objection, Your Honor, competency.

18 JUDGE CHACHKIN: Sustained.

19 BY MR. EMMONS:

20 Q Was Raystay negotiating with other parties over a
21 possible sale of the low power permits at the time that the
22 negotiations with Trinity were terminated?

23 A I believe so, yes.

24 Q What other negotiations did you know about?

25 A I was aware of the negotiations with Dennis Grolman

1 and I was very slightly generally aware that Lee Sandifer was
2 having discussions with Robert Shafner about W40, and I think
3 I was aware that he mentioned the other construction permits,
4 but my impression of Shafner was he was interested initially
5 in W40.

6 Q All right. Now, I think you mentioned the other day
7 that Mr. Shafner owner a cable television system?

8 A Yes.

9 Q And that was in the, in the general area of
10 Carlisle?

11 A Yes.

12 Q And the name of that system was Flight Systems?

13 A Yes.

14 Q Were you aware of any discussion between Mr. Shafner
15 and Raystay about a price for the -- for TV40 and/or the
16 permits?

17 A Yes, of TV40.

18 Q What were you aware of?

19 MR. SCHAUBLE: Your Honor, objection on the grounds
20 of relevance. To the extent we're discussing price concerning
21 TV40, I don't understand the relevance.

22 JUDGE CHACHKIN: How is it relevant?

23 MR. EMMONS: Well, we haven't established that, Your
24 Honor, because the witness has indicated that his impression
25 of discussions with Mr. Shafner was that they may also have

1 included the construction permits in addition to TV40.

2 MR. SCHAUBLE: Your Honor, as I understood the
3 witness' last answer, counsel asked whether he had -- aware of
4 a price concerning TV40 or the construction permit and the --
5 I believe the witness' -- the witness referred to TV40. I
6 think before we go any further in this area perhaps we should
7 clarify as to whether he was aware of any, any knowledge
8 concerning prices on the construction permits before we allow
9 any further inquiry in this area.

10 JUDGE CHACHKIN: Your question is what, your last
11 question?

12 MR. EMMONS: Your Honor, I'll withdraw that question
13 and move on.

14 BY MR. EMMONS:

15 Q Mr. Gardner, does Raystay have a practice of
16 adopting an annual budget?

17 A Yes.

18 Q Has it always had that practice since you've been
19 with Raystay?

20 A For many years. I, I can't speak to the very early
21 years, but in recent years, yes.

22 Q What is Raystay's fiscal year?

23 A November 1st to October 31st.

24 Q Are you aware or do you know whether Raystay ever
25 included in its fiscal year budget for any fiscal year during

1 | which it held the low power television permits, did it ever
2 | include funds in its budget for construction of those low
3 | power stations?

4 | A I did not create the budgets, so I am not familiar
5 | with what was in them.

6 | Q Did you ever see the budget?

7 | A I've seen pieces of them.

8 | Q You've never seen an entire budget?

9 | A Not since Lee Sandifer took over as Chief Financial
10 | Officer.

11 | Q In anything that you have seen have you seen any
12 | funds budgeted for construction of the low power television
13 | stations?

14 | MR. SCHAUBLE: Objection, Your Honor.

15 | JUDGE CHACHKIN: Sustained. There's no evidence
16 | that he's familiar with the budget.

17 | MR. EMMONS: Well, he said he'd seen pieces of the
18 | budget, Your Honor.

19 | JUDGE CHACHKIN: He said pieces and he said he's
20 | seen it, but the Chief Financial Officer is Lee Sandifer. Why
21 | don't you ask him --

22 | MR. EMMONS: I'm going to ask him, Your Honor.

23 | JUDGE CHACHKIN: -- instead of asking this witness?

24 | MR. EMMONS: All right.

25 | BY MR. EMMONS:

1 Q Now, there came a time, did there not, Mr. Gardner,
2 in December 1991 that you participated in the preparation of
3 applications to file with the FCC to extend the construction
4 permit for the two Lancaster and the two Lebanon low power
5 permits?

6 A Yes.

7 Q Was it your responsibility as part of your job
8 duties to prepare those applications?

9 A Yes.

10 Q And in the course of preparing those applications
11 did you communicate with the firm of Cohen & Berfield?

12 A Yes.

13 Q Now, if you'll look at your, your testimony which is
14 Glendale Exhibit 209, page 1 -- let's start at page 2.

15 A Yes. I'm sorry. I'm on page 3. Page 2, yes.

16 Q The pages are numbered at the top of each page.

17 A Yes. I have page 2.

18 Q At the, at the bottom of that page you say, "In
19 December 1991 I sent a note to Cohen & Berfield asking them to
20 prepare applications to extend the LPTV construction permits."
21 I want to show you a document and ask you if this is the note
22 to which you have referenced in that testimony?

23 A It would appear to be.

24 MR. EMMONS: Your Honor, I'd ask that the document
25 I've just showed the witness be marked for identification as

1 TBF Exhibit 267.

2 JUDGE CHACHKIN: The document so described will be
3 marked for identification as TBF Exhibit 257, did you say?

4 MR. EMMONS: 267, Your Honor.

5 JUDGE CHACHKIN: 267.

6 (The document referred to as TBF
7 Exhibit 267 was marked for
8 identification.)

9 MR. EMMONS: And I'd move the document into
10 evidence, Your Honor.

11 JUDGE CHACHKIN: Any objection?

12 MR. SCHAUBLE: No objection, Your Honor.

13 JUDGE CHACHKIN: TBF Exhibit 267 is received.

14 (The document referred to as TBF
15 Exhibit No. 267 was received into
16 evidence.)

17 BY MR. EMMONS:

18 Q Now, Mr. Gardner, the, the note which is now TBF
19 Exhibit 267, let me ask you is that your, your handwriting on
20 the note?

21 A Yes.

22 Q And in the comment line do you see the words "Per
23 your request?"

24 A Yes.

25 Q Was this note in response to a request from Cohen &

1 Berfield for information?

2 A It would appear to be, yes.

3 Q Now, did you thereafter have a telephone
4 conversation with Mr. John Schauble of Cohen & Berfield?

5 A Yes.

6 Q And did that telephone conversation occur after the
7 transmission of this note? I see that the note is dated
8 December 9, 1991.

9 A I don't recall the progression.

10 Q But in any event you had a telephone conversation
11 with Mr. Schauble in which you discussed what?

12 MR. SCHAUBLE: Clarification, Your Honor. The
13 direct -- there was direct testimony from the witness. Is
14 counsel asking for information in addition to what's already
15 in direct testimony or, or --

16 MR. EMMONS: There's no clarification. It is cross-
17 examination. I don't have --

18 JUDGE CHACHKIN: Objection is overruled.

19 MR. GARDNER: Could you repeat the question, please?

20 BY MR. EMMONS:

21 Q You referred to a telephone conversation with Mr.
22 Schauble and, as Mr. Schauble points out, that conversation is
23 referred to in your direct written testimony which is Glendale
24 Exhibit 209, specifically at the top of page 3, second line.
25 And I've already asked you whether that conversation occurred

1 after you sent this note and I think you -- if you'd look at
2 the second line of page 3 of your written testimony, you say,
3 "Shortly after I sent that note I had a telephone conversation
4 with John Schauble." Do you see that?

5 A Yes.

6 Q Does that now refresh your recollection as to the
7 sequence of the events between the note and the telephone
8 conversation?

9 A Yes.

10 Q And your written testimony is correct?

11 A Yes.

12 Q And in that conversation did, did Mr. Schauble ask
13 you a number of questions?

14 A Yes.

15 Q And did you answer those questions?

16 A Yes.

17 Q And thereafter did Mr. Schauble draft application to
18 the FCC for extension of the low power permits?

19 A Yes, for at least four of them. I see on the note
20 it says W23AY for transfer.

21 Q All right. That -- what does that refer to?

22 A That would be the, the permit now with the city of
23 license in York which was to be transferred to Dennis Grolman.

24 Q All right. So that one was not going -- there was
25 no extension going to be asked -- requested for that one, I

1 take it?

2 A From this document it would appear not, yes.

3 Q Now, the sentence just before that on the note, TBF
4 Exhibit 267, says, "Licenses for renewal." When you use the
5 term renewal there, did you mean extension?

6 A Yes.

7 Q Now, would you turn in the blue volume to TBF
8 Exhibit 242, please?

9 A Is that a new volume?

10 Q Yes. It's Volume 3D.

11 A 3D as in David?

12 Q Yes.

13 A Yes.

14 Q And this is a fax message apparently of one page to
15 you from John Schauble and my -- dated December 12, 1991. My
16 question to you is did you receive this on or about December
17 12, 1991?

18 A Yes.

19 Q And the message portion toward the bottom indicates
20 that there are enclosures that came with this and my question
21 is was there a draft enclosed with this covering message?

22 A I believe there was, yes.

23 Q And then the last sentence of the message says,
24 "Please review the exhibit carefully to make sure it is
25 accurate. Then call me to discuss." My question is did you

1 review the draft exhibit that Mr. Schauble had sent to you?

2 A Yes.

3 Q And did you understand from the message that Mr.
4 Schauble wanted you to make sure that everything in the
5 exhibit was accurate?

6 A Yes.

7 Q And did you understand from the message that Mr.
8 Schauble was inviting you to suggest any changes to the draft
9 that you might feel were appropriate?

10 A Yes.

11 Q Now, after reviewing the draft did you call Mr.
12 Schauble, as he had requested in the message?

13 A I know we had additional phone conversation and I
14 don't know whether he called me or I called him.

15 Q And in that additional conversation what did you
16 tell him?

17 A I told him I believed the exhibit was accurate.

18 Q Now, would you turn then to TBF Exhibit 243?

19 A Yes.

20 Q This is a letter to you dated December 16, 1991 from
21 John Schauble and my first question is did you receive this
22 letter on or shortly after December 16, 1991?

23 A Yes.

24 Q And did the letter enclose completed applications
25 for the Lancaster and Lebanon low power extensions to the FCC?

1 A Yes.

2 Q What did you do with those applications after you
3 received them?

4 A I reviewed all the pages to see that they were
5 accurate and that there were no typing errors or anything of
6 that nature, spelling errors, and once I had completed my work
7 on them I would have -- I did get them signed.

8 Q Now, turn to TBF Exhibit 244, please. Do you have
9 that?

10 A Yes.

11 Q Now, this is a handwritten note dated December 18,
12 1991. Is that your handwriting?

13 A Yes, it is.

14 Q And to whom did you send that note?

15 A My normal practice would have been to send the note
16 and the forms to Lee Sandifer for his review and then he would
17 have sent them to George Gardner for signature. I don't
18 remember doing that exactly, but that's what my normal
19 practice would be.

20 Q Were you under instructions to, to have Mr. Sandifer
21 review such materials before they were signed?

22 A Yes.

23 Q And who put you under that instruction?

24 A George Gardner.

25 Q And what, if anything, did he tell you as to why he

1 was giving that instruction?

2 A Quite some time prior to this he had designated Lee
3 Sandifer as my supervisor and he asked that all licenses,
4 contracts, leases, etc. for his signature be reviewed by Lee
5 Sandifer first.

6 Q Did he say why he wanted that intermediate review
7 before he would sign documents that you had passed on?

8 A I don't recall.

9 Q You have no understanding of why, why that
10 instruction was given?

11 MR. SCHAUBLE: Objection, Your Honor.

12 JUDGE CHACHKIN: Sustained. How is it relevant what
13 the -- all that's relevant is the facts, the reason he wants
14 them not to -- when he gave that instruction is irrelevant to
15 the issues in this case.

16 BY MR. EMMONS:

17 Q With reference to the note of December 18, TBF
18 Exhibit 244, do you see on the first line again the word
19 "renewals" is used?

20 A Yes.

21 Q And did you mean by that extension?

22 A Yes.

23 Q Now, did George Gardner sign the, the applications?

24 A Yes.

25 Q Did he return the signed applications to you?